

Unfunded Mandates Reform Act

Appendix B.--Unfunded Mandates Reform Act

This rule has been reviewed under the Unfunded Mandates Reform Act (P.L.104-4). The Act requires that agencies prepare a qualitative and quantitative assessment of the anticipated costs and benefits before issuing any rule that may result in annual expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million (adjusted annually for inflation) in any 1 year. According to the Act, the term, "Federal mandate," means any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments or the private sector, except a duty arising from participation in a voluntary Federal program.

The National Organic Foods Production Act (OFPA) of 1990 mandates that the Secretary develop a national organic program to accredit eligible governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in the OFPA. The OFPA also permits a governing State official to voluntarily establish a State organic program (SOP) if the program is approved by the Secretary and meets the requirements of the OFPA. The OFPA does not require that States establish their own SOP's or that State, local, or tribal governments or the private sector become accredited; therefore, the OFPA is not subject to the Unfunded Mandates Reform Act because it is a voluntary program.

Although the U.S. Department of Agriculture has determined that this rule is not subject to the Unfunded Mandates Reform Act, USDA has sought to consider the rule's impact on various entities. USDA prepared a Regulatory Impact Assessment (RIA) that is discussed in the section entitled "Executive Order 12866" (also attached as an appendix to this regulation). The RIA consists of a statement of the need for the action, an examination of alternative approaches, and an analysis of the benefits and costs. Much of the analysis is necessarily descriptive of the anticipated impacts of the rule. Because basic market data on the prices and quantities of organic goods and services and the costs of organic production are limited, it is not possible to provide quantitative estimates of all benefits and costs of the rule. The cost of fees and recordkeeping required by USDA are quantified, but the anticipated benefits are not. Consequently, the analysis does not contain an estimate of net benefits.

The analysis employed in reaching a determination that this rule is the least costly and least burdensome to the regulated parties is discussed in the sections entitled "The Regulatory Flexibility Act and the Effects on Small Businesses" and "Paperwork Reduction Act of 1995." The rule has been designed to be as consistent as possible with existing industry practices, while satisfying the specific requirements of the OFPA.

We have had numerous occasions during which to communicate with various entities during the development of the rule; States, for example. Currently, there are 32 States with some standards governing the production or handling of organic food and 13 States with organic certifying programs. Representatives of State governments have participated in public meetings with the National Organic Standards Board, while the NOP staff has made presentations, received comments, and consulted with States and local and regional organic conferences, workshops, and trade shows. States have been actively involved in training sessions for organic inspectors; public hearings concerning standards for livestock products during 1994; a national Organic Certifiers meeting on July 21, 1995; a USDA-hosted meeting on February 26, 1996; a State certifiers meeting in February 1999; and an International Organization for Standardization (ISO) 65 assessment training session for certifiers in April-May 1999. More detail about contact with States regarding this rule is in the Federalism

section. It is unknown at this time how many States, if any, might voluntarily establish their own SOP's pursuant to the OFPA and the regulations.